IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.4872 OF 1998
with
SPECIAL CIVIL APPL ICATION NO.1390 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

ARJUN APARTMENT ASSOCIATION
VERSUS
GUJARAT HOUSING BOARD & ANR.

Appearance:
(In SCA No.4872/98)
MR RA PATEL for petitioner
MRS KA MEHTA for respondents No.1 & 2
MR HM BHAGAT for respondent No.3

(In SCA No.1390/99)
MR RA PATEL for petitioner
MR HS MUHSHAW for respondents No.1
MR HM BHAGAT for respondent No.2

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 1/08/2000

C.A.V. JUDGMENT

#. In both these matters, the parties are common, the points raised therein are also common and as such, the same are taken up for hearing together and are being decided by this common order.

#. Heard the learned counsel for the parties.

#. In special civil application No.4872 of 1998, the petitioner prayed for following reliefs:

(A) To quash and set aside the impugned letter dt.6.4.98 (Annex.D) issued by the respondent No.2 whereby the members of the petitioner association are called upon the pay extra amount of Rs.1,35,000/- for A type flats and Rs.1,00,500/- for B type flats

(B) To issue a writ of Mandamus or any other appropriate writ, order or direction directing the respondents not to sale, transfer, allot or alienate in any manner whatsoever, the aforesaid houses which lawfully belong to the members of the petitioner association and are also constructed for the members of the petitioner association, pending final disposal of this petition

(C) To direct the respondents to hand over the possession of the houses to the members of the petitioner association within a period of 15 days from the date of issuance of the said order

(D) To quash the demand of the respondents contained in its letter dt.6.4.1998 (Annex.D) demanding stamp duty @ 7.5% as being illegal

(E) To award cost of this litigation ......

#. In special civil application No.1390 of 1999, the petitioner prayed for following reliefs:

(a) Allow this special civil application

(b) issue a writ of Mandamus or any other appropriate writ in the nature of Mandamus, order or direction directing the respondent Board not to

charge stamp duty from the members of the petitioner - association at the time of handing over possession of the flats in question and quash and set aside the demand raised in the letter Annexure-E to the petition, by holding that the property constructed by the Board is owned by the members of the association through the respondent Board at Pragatinagar, Naranpura, Ahmedabad, more particularly known as 32 H.I.G. Self Finance Scheme at Pragatinagar

(c) Pending hearing and final disposal of this petition, the execution, implementation and operation of the demand made in the letter dated - -98 at Annexure-E to the petition. And also direct the respondent Board not to ask for stamp duty at the time of handing over possession of said flats.....

#. Here, the petitioner is an Association and not individuals to whom houses were allotted by Gujarat Housing Board. In special civil application No.4872 of 1998, this court on 8.9.98, passed the following order:

Heard Ms.Bhaya, learned advocate appearing for the petitioner and Ms.Mehta, learned advocate appearing for the respondent-Board. On 25th June, 1998, following order was passed by this Court:

"Heard Ms.Bhaya for the petitioner. The petitioner is an association of applicants for the higher income scheme floated by the first respondent-housing board. The scheme was to be completed by September, 1997 but the buildings were not ready for occupation at that time and they are ready now. For the two types of flats namely A & B, a rise of around Rs.1 lakh in the cost is sought by the respondent Board. That amount is sought to be paid by 30.6.1998 by letter dated 29th May, 1998. In clause 13 of the earlier order dated 6.4.1998, the applicants are told that if the amounts are not paid, their names will be removed from the list of successful applicants and the flats will be allotted to the persons in the waiting list. Ms.Bhaya draws my attention to the judgment of the Supreme Court report in 1995(3) SCC 1

which requires the Housing Board to explain to the satisfaction of the Court the reasons for the enhancement of the cost. In the circumstances, notice be issued to the respondents returnable on 9.7.1998. In the meanwhile and until further orders, if the petitioners do not deposit the enhanced amount as demanded, their names will not be deleted from the list of successful allottees. Direct service is permitted."

2. The respondent has filed affidavit in reply interalia indicating that the work of construction was started on 1st January, 1996 and was to be completed on 30th September, 1997 which were tentative dates given in the public notice. However, because of the procedure of invitation of tender and acceptance thereof, submission of plans for necessary sanctions to the Municipal Corporation and consumption of time taken in obtaining water supply and drainage connection, the actual construction came to be started on 25th June 1996 and the actual date of completion of the work was 24th December, 1997. The building use permission was granted on 15th December, 1997. Thus, according to the respondent Board, for the reasons beyond the control of the Board, delay ensued. As a result thereof, there was rise in the price. However, the affidavit in reply filed by the Board is silent with regard to the particulars concerning the rise in prices. Even from the table Annexure "A" to the affidavit in reply, it is not possible to point out rise in price of particular items. Thus, the respondent Board has failed to explain at this stage such reasons for enhancement of the cost. The petitioner has filed affidavit in rejoinder. In this view of the matter, this petition requires consideration on merits. Hence following order is passed.

Rule. By way of interim relief, it is hereby directed that the petitioners' names will not be deleted from the list of successful allottees. Since the petitioners are ready and willing to pay to the Respondent Board the ultimate amount which they were required to pay without prejudice to the rights and contentions of the parties and subject to the result of this petition, they will accordingly pay

Rs.1,04,200/for "A" type flats per flat and Rs.75,200/- for "B" type flats per flat within a period of six weeks from today. If it is found that there is an over payment by the petitioners or any of the petitioners' members at the time of final hearing and disposal of the petition, the amount shall be refunded with interest that might be fixed by the Court at the time of hearing. The procedure for handing over of the possession after completion of the flats will immediately start upon payment of the amount."

#. The learned counsel for the Housing Board, Mrs.K.A.Mehta, stated that in compliance of the order of this court aforesaid, all the members of the petitioner-association have paid the amount of Rs.1,04,200/- for "A" type flats and Rs.75,200/- for "B" type flats. The possession of the flats has also been taken. The learned counsel for the Housing Board further states that all the members of the association, except two, paid conveyance charges and accordingly conveyance deed has also been executed by the Board in their favour which has been duly registered by the registration authority.

#. These facts have not been controverted by learned counsel for the petitioner. In the matter of dispute in between allottees of the houses and the Housing Board regarding payment of cost of houses and secondly regarding demand of conveyance charges for the documents to be executed of the title, the petitioner-association has not locus-standi. These are individual matters of the allottees of the houses and the Board for which individuals have to come up before this court. It is not out of context to state that except two, all other members have paid conveyance charges and they got the document of title registered without there being any objection. When the members themselves have no objection to pay conveyance charges, I fail to see any justification in the contention of the learned counsel for the petitioner on this aspect. So far as two other members are concerned, if they are aggrieved of this demand of the Housing Board, they have their separate cause of action and right to make grievance before appropriate authority and not by the petitioner. In such matters, petition at the instance of association is difficult to conceive. These are the grievances for which those persons who are affected may approach to the appropriate forum available. In such matters, otherwise also, it is not in the larger interest that the association should be engaged to file petition. I have

seen cases after cases where petitions have been filed by association and some settlements have been made but the members thereof are not accepting the same under different pretext that either they are not the members of the association or they have not instructed the association to file petition or enter into settlement. In this case also, as said earlier, all the members, except two, have already paid conveyance charges. They have not raised any objection. How far it is justified for the association to prosecute this petition. So far as the cost of houses is concerned, leaving apart whether this grievance can be entertained at the instance of association or not, many factual aspects and questions are to be gone into and for adjudication thereof, this forum is not otherwise available.

#. As a result of aforesaid discussion, these special civil applications fail and the same are dismissed. Interim relief which has been granted earlier stands vacated. Rule discharged in special civil application No.4872 of 1998. Notice discharged in special civil application No.1390 of 1999. However, dismissal of these petitions will not come in the way of the individual allottees of the houses by the Housing Board, if they have any grievance against the cost of the houses or the demand of conveyance charges, to approach to the appropriate redressal forum available. No order as to costs.

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(sunil)